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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MICHAEL T. MORMAN, PATRICIA H. CALHOUN, and  
JAMES M. CARR

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Appeal 2009-011564  
Application 10/730,493  
Technology Center 3700

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Before: WILLIAM F. PATE III, STEVEN D.A. MCCARTHY, and  
MICHAEL W. O'NEILL, *Administrative Patent Judges*.

PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1-6, 9, 12, 13 and 15-21. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

The claims are directed to an absorbent article with elastomeric bordered necked material bodyside liner. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An absorbent article, comprising:

- a chassis having a front waist region, a back waist region, and a crotch region extending between said front and back waist regions;

- an outer cover member extending longitudinally between said front and back waist regions;

- a bodyside liner extending longitudinally between said front and back waist regions;

- an absorbent body structure sandwiched between said outer cover member and said bodyside liner;

- said bodyside liner comprising a material having a necked base layer of a fluid permeable material, said base layer material being necked by being tensioned in a first direction;

- at least a first and a second strip of elastomeric material bonded directly to said necked base layer material with a space between said strips such that a center necked region of said base layer material is bordered on at least two longitudinally extending sides by flat, planar composite regions of said elastomeric materials and said base layer material, said center region generally aligned with said absorbent body structure; and

- wherein said center region of necked base layer material is bonded directly to the immediately underlying portion of said absorbent body structure in registry with the center region of necked base layer material in its necked condition and said composite regions are stretchable in at least a second direction of said absorbent article.

## REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Serbiak	US 5,846,232	Dec. 8, 1998
Popp	US 6,716,205 B2	Apr. 6, 2004

## REJECTIONS

Claims 1-6, 9, and 18-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Serbiak. Ans. 3.

Claims 12, 13, and 15-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Serbiak, and Popp. Ans. 10.

## OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellants and the Examiner. As a result of this review, we have determined that the applied prior art does not establish the prima facie obviousness of claims 1-6, 9, 12, 13, and 15-21. Therefore, the rejection of these claims is reversed. Our reasons follow.

We acknowledge that Serbiak discloses a chassis or body structure 26, an outer cover 22, a body sideliner 24 and an absorbent body 36. *See* col. 6, ll. 11-23; col. 7, ll. 39-42. Serbiak further discloses a body sideliner comprising a material having a necked base layer of a fluid permeable material. *See* col. 7, ll. 1-10. However, we do not find in Serbiak first and second strips of elastic material bonded directly to the necked base layer material with a space between the strips such that the center necked region is bonded to the absorbent body structure. With respect to claim 18, we do not

find where Serbiak discloses a body sideliner of necked base material with a single strip of elastic material bonded directly thereto.

The Examiner recognizes that none of the embodiments of Serbiak disclose the materials of the claimed subject matter arranged in the manner as claimed. Ans. 5, ll. 10-13. Thus the Examiner must rely on various features from the individual embodiments of Serbiak and three general statements in Serbiak that the embodiments can be combined. Serbiak, col. 2, ll. 42-47; col. 8, ll. 8-16; and col. 9, ll. 18-23.

In our view, the Examiner has not articulated reasoning with rational underpinning as to why one of ordinary skill in the art would pick and choose various features from the individual embodiments of Serbiak to construct the claimed subject matter. In our view, the rejection of independent claims 1 and 18 is based on impermissible hindsight reconstruction of the claimed subject matter. Accordingly, the subject matter of claims 1-6, 9 and 18-21 is not prima facie obvious.

Turning to the rejection of claims 12, 13, and 15-17, the cited reference to Popp does not ameliorate the difficulties we have found with respect to the rejection based on Serbiak alone. Accordingly, the rejection of claims 12, 13 and 15-17 is also reversed.

## DECISION

The obviousness rejections of claims 1-6, 9, 12, 13, and 15-21 are reversed.

REVERSED

Appeal 2009-011564  
Application 10/730,493  
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